

United States Postal Service

§ 952.18

§ 952.15 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

- (a) The evidence to be offered in such place;
- (b) The names and addresses of the witnesses who will testify;
- (c) The reasons why such evidence cannot be produced at Arlington, VA. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11563, June 16, 1971, as amended at 63 FR 66050, Dec. 1, 1998]

§ 952.16 Appearances.

- (a) A respondent may appear and be heard in person or by attorney.
- (b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.
- (c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the complaint shall be mailed to the attorney.
- (d) A respondent must promptly file a notice of change of attorney.

§ 952.17 Presiding officers.

- (a) The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party.
- (b) The presiding officer shall have authority to:
 - (1) Administer oaths and affirmations;
 - (2) Examine witnesses;
 - (3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final Agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 952.19 and § 952.21.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 38 FR 20263, July 30, 1973; 44 FR 61960, Oct. 29, 1979; 65 FR 32027, May 22, 2000]

§ 952.18 Evidence.

(a) Except as otherwise provided in these rules, the Federal Rules of Evidence shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) Authoritative writings of the medical or other sciences, may be admitted in evidence but only through the testimony of expert witnesses or by stipulation.

(f) Lay testimonials will not be received in evidence as proof of the efficacy or quality of any product or thing sold through the mails.

(g) The written statement of a competent witness may be received in evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing

that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

(h) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.19 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service*—(1) *In general.* The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial